BRIEF IN SUPPORT OF MOTION.

On December 22, 1942, a similar motion to supplement the record was made by counsel on behalf of the Debtor herein by filing a certified copy of the balance sheet as of October 31, 1942, and summary of revenues and expenses for the month of October, 1942. The purpose of this second motion is to bring the record down to the end of the calendar year 1942. It will be noted that the financial condition of Debtor's estate has substantially improved during the last two months of 1942.

On page 9 of the brief in support of the motion to supplement the record filed on December 22, 1942, is shown a statement of the current assets account of Debtor's estate as of October 31, 1942. The following table shows a comparison of the account as of October 31, 1942, and as of December 31, 1942.

			October 31, 1942			December 31, 1942
(708)	Cash		$37,456,382			$40,227,077
(709)	Temporary cash investments		10,776,181			17,226,181
(711)	Special deposits		7,842,119			6,986,251
	Total		$56,074,682			$64,439,509
(712)	Loans and bills receivable	$ 900		$ 1,000		
(714)	Net balance receivable from agents and conductors (cash in transit, etc.)	3,407,086		3,109,687		
(715)	Miscellaneous accounts receivable (including large government freight and passenger accounts)	6,149,843		7,235,559		
(716)	Material and supplies on hand	10,090,898		9,664,241		
(717)	Interest and dividends receivable	63,811		60,248		
(719)	Other current assets	204,467	19,917,005	289,835		20,360,570
	TOTAL CURRENT ASSETS		$75,991,687			$84,800,079

It will be noted from the foregoing comparison that the cash and cash-equivalent items as of December 31, 1942, has increased in the amount of $8,364,827; the total increase of current assets in the two-month period is $8,808,392. Debtor's estate, as of December 31, 1942, has ample funds to pay off the indebtedness to the Reconstruction Finance Corporation, at that date principal and interest at 4 per cent amounting to $48,322,687, and still have ample working capital to maintain and operate the property of the Debtor now in control of the Trustee.

Confirming the statement in Appendix B to the motion of December 22, 1942, of Debtor's comptroller estimating that the items of cash, temporary cash investments, and special deposits, which aggregated on November 30, 1942, the sum of $59,575,918, would exceed $60,000,000 on December 31, 1942, it now appears, as shown in Appendix A hereto, that the three items on December 31, 1942, aggregated $64,439,509, substantially in excess of the comptroller's estimate.

While it was stated in Appendix B to Debtor's motion of December 22, 1942, that Debtor's comptroller estimated that income available for fixed charges, but before income taxes, for the calendar year 1942 would approximate $32,200,000, it now appears (see Appendix B hereto) from actual results of operation for 1942 that income available for fixed charges, before income taxes, is $35,742,316.

There can be no question but that the condition of

Debtor's estate, as shown by the balance sheet and the income account, is now vastly different from that which existed at the time the Commission and the District Court approved the plan of reorganization.

In the brief in support of the motion to supplement the record of December 22, 1942, we cited a number of authorities to support the proposition that this Court may properly consider changed conditions. In addition to the cases there cited, we call attention to *United States* v. *Swift & Co.*, 286 U. S. 106, 76 L. ed. 999, wherein this Court held that a court of equity has power to modify a decree in an adaptation to changed conditions. We quote from the decision of the Court (286 U. S. 114-5; L. ed. 1005-06):

> "Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. * * * The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative * * *. The result is all one whether the decree has been entered after litigation